

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, & Remy

From: William J. Lenkeit, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Agency Tickets – Repeal and Readoption of Regulation 18944.1 and
Adoption of Regulation 18944.3

Date: November 25, 2008

Proposed Commission Action and Staff Recommendation: Repeal and readopt Regulation 18944.1 concerning tickets given to, and by, state and local agencies that result in a possible gift to a public official of the agency; adoption of Regulation 18944.3 relating to any items given by an agency to one of its officials; and adopt related Form 802.

Status of Proposed Regulations: At the September Commission meeting, the Commission approved for notice the repeal and readoption of proposed Regulation 18944.1 and the adoption of proposed Regulation 18944.3. Subsequent to that meeting, staff met with city attorneys from the cities of Pasadena, Anaheim, and Mountain View to further discuss the regulation. As a result of the meeting, staff has made minor clarifying changes, which are identified in strikeout and italics. Additionally, Form 802 was created to report the information required in proposed new Regulation 18944.1.

Reason for Proposed Action: The Political Reform Act defines a gift as: “any payment that confers a *personal benefit* on the recipient to the extent that consideration of equal or greater value is not received....” (Section 82028(a), emphasis added.) Proposed new Regulation 18944.1 addresses a specific type of gift — tickets for admission to entertainment or recreational events that are provided to public officials by an agency and that are not part of the income the official receives for the performance of his or her duties. As such, the regulation addresses certain conduct engaged in by agencies and public officials where an official receives something of personal value that was not paid for by the official. Unless subject to one of the exceptions provided in the regulation, the ticket is a gift to the official.

As mentioned above, proposed Regulation 18944.1, as an exception to the gift rules, does not apply if the ticket is provided as compensation to the official for performance of his or her “official duties.” If the agency determines that tickets are to be provided as income for the position and, therefore, not subject to the provisions of the regulation, it must treat the payment as income subject to federal and state income tax law and provide notice that the ticket is being considered as income for the position.

Regulation 18944.3 applies to any gifts made to a public official using public funds. The regulation simply clarifies that in all situations where a gift of public funds is a misuse of public resources under state law, the Commission will treat the payment as a gift subject to the gift provisions of the Act.

Detailed Description of Proposed New Regulation 18944.1: Proposed new Regulation 18944.1 addresses three means by which an official may acquire a ticket or pass: (1) the ticket is provided to the official directly by a source other than the agency; (2) the ticket is provided to the agency from an outside source and used by an agency official; and (3) the ticket is acquired by the agency either through a contract for use of the agency facility or an agency controlled event.

Each of the exceptions require that there be some showing of equal or greater benefit provided by either the agency or by the official in distributing or accepting the ticket. For the first exception, subdivision (b)(1), the regulation recognizes that when an official performs a ceremonial function at an event he or she is providing a service with equal or greater benefit to the ticket provided and, consequently, no gift to the official will result from the acceptance of the ticket. This exception follows long established Commission policy.

The second exception under subdivision (b)(2) applies when the ticket is given to the agency from an outside source that is under no obligation to provide the ticket, and the agency then passes the ticket to one of its officials for his or her use. For the exception to apply, the ticket may not be earmarked, the agency must determine by whom it will be used, and use of the ticket must further a governmental or public purpose.

The final exception, under subdivision (b)(3) applies when the agency “owns” the ticket as a result of a contract, controlling the event, or by purchasing the ticket. For the exception to apply, use of the ticket must further a governmental or public purpose.

Under subdivisions (b)(2) and (b)(3) the equal or greater value provided takes the form of a governmental or public benefit. In other words, if the tickets, which are agency/public resources, are used to provide a uniquely personal benefit to a public employee, the agency/public must benefit by receiving equal or greater value in return. The use of the ticket must further a specific governmental or public purpose to provide that benefit.

The regulation’s final provisions set out the framework for implementation of an agency policy for distribution of tickets under the regulation. Subdivision (c) requires the agency to establish a written policy regarding its ticket distribution practice and to publish the policy on its website. Subdivision (d) requires that information regarding the distribution of tickets by the agency also be posted on the agency’s website on a form (Form 802) that provides the relevant information on the ticket and the purpose of its use so that the public may be informed as to where its resources are being directed.

Summary: The Act states that an official receives a gift if he or she receives a personal benefit of value and provides no consideration in return. Current Regulation 18944.1 deviates from this requirement by permitting an official to use a ticket for purely personal use and benefit without providing any consideration.

Proposed Regulation 18944.1 rectifies this problem by providing two alternative methods by which an official does not receive a gift by accepting these types of tickets: (1) the ticket is treated by the official's agency as income to the official consistent with applicable tax laws; or (2) the official provides equal or greater consideration by providing a public benefit through the use of the ticket.

Proposed Regulation 18944.1 also ensures greater transparency by requiring posting of the distribution and use of the ticket on the agency's website so the public may more closely scrutinize how its resources are being used.

Attachments:

- 1 - Repeal and re-adopt Regulation 18944.1**
- 2 - Adopt Proposed Regulation 18944.3**
- 3 - Adopt Form 802**